

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 920 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MULTAN HALEKHAN MEV

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 920 of 2002
MR PM THAKKAR, LD.SENIOR COUNSEL WITH
MR.HRIDAY BUCH for Petitioner No. 1-6
MR SUDHANSU S.PATEL, LD.APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 07/08/2003

ORAL JUDGEMENT

1. This appeal is filed by the present appellants
original accused No. 1 to 6 of Sessions Case No.67 of

2001 and Sessions Case No.105 of 2001 of the court of learned Additional Sessions Judge (Fast Track), Rajkot against the judgment and order recorded on 7th September, 2002, convicting the present appellants for the charges levelled against them under Sections 325, 342, 395, 397, 427 of the Indian Penal Code and Section 25(1)(a) of the Arms Act, 1959, and sentencing each of them for the imprisonment of three years for the offence proved against each of them for the Arms Act and fine of Rs.500/- in default to undergo three months imprisonment, for the charges levelled against each of the appellant under Sections 395, 397 each of the appellant was sentenced to imprisonment of seven years and fine of Rs.5,000/-, in default to undergo simple imprisonment of one year. However no separate sentence was awarded for the charges under secs.325 and 342 of the IPC while each of the appellant was sentenced to undergo R.I. of one year and fine of Rs.500/- for the charges proved against them under Sec.427 of IPC. There were in all eight accused and learned Additional Sessions Judge acquitted accused No.7 Mahejrakha Fulkha Mev and accused No.8 Mohmed Umar Chavkha Mev for the charges levelled against them.

2. As revealed from the record the facts leading to the filing of this appeal are as under:

2.1 Kanjibhai Nanjibhai Rathod P.W.4 Exh.26 at the relevant time i.e. on 3rd July, 2000, aged about 75 years was working as a watchman on duty 24 hours in United Paper Industries situated at Village Navagam, Near Old Highway in the District of Rajkot. On 3rd July, 2000, as discovered by Kishorbhai Kanjibhai Rathod P.W.1 son of P.W.4 Kanjibhai, as per normal routine, since Kishorbhai Kanjibhai Rathod P.W.1 was having a cabin for tea near United Paper Industries, and as usual, on 3rd July, 2000, at about 7.00 in the morning when he went to the cabin of his father in the premises of United Paper Industries, his father was not found in his cabin and the other watchman named as Jadav informed Kishorbhai Kanjibhai P.W.1 that the father of Kishorbhai was not in cabin and one rifle was found in his cabin. Thereafter, P.W. 1 Kishorbhai Kanjibhai straightway went to his residence and informed his wife and his brother and social worker Babubhai Dabhi. Babubhai Dabhi from his residence informed the police that the father of P.W.1 was not found in his cabin and a rifle was found lying. Kishorbhai thereafter returned to United Paper Industries where near this industry one godown rented to M.R.F.Tyre Company was situated. Vinodbhai peon of the godown informed P.W.1 that shutters of the godown of M.R.F.Tyre

Company was found broken open. Therefore P.W.1 Kishorbhai and Vinodbhai again went to the village Navagam and through STD PCO informed to the Manager of M.R.F.Tyre Company Shri V.Ramkrishnan Venkatraman Aiyer P.W.6 who visited the godown. At that time, the police also reached at the spot, and on searching the godown, it was found by one of the police man from the window of the godown that Kanjibhai father of Kishorbhai was lying in the godown. He was carried out of the godown and after comforting him he was asked about what had happened. He was not in a condition to speak and therefore by gesture he attempted to explain that at previous night on that day some two unknown persons came with rifles which were kept in cabin of Kanjibhai and Kanjibhai was carried in godown and was beaten by fist on his chest and on sides. Thereafter the godown of M.R.F.Tyre Company was opened through the shutters which were broken and P.W.4 Ramkrishnan Aiyer found that in all 160 tyres of 1000 x 20 size and 900 x 20 size in all 15 tyres amounting to about Rs.17.50 lakhs were stolen from the godown, and according to P.W.4 Ramkrishnan Aiyer, the goods of tyres was in such volume as could be carried by two trucks only and therefore on the spot a complaint at 9.45 hours on 3rd July, 2000, was recorded by Police Inspector, Rajkot City Police Station of informant Kishorbhai Kanjibhai Rathod. Thereafter the investigation was started and was entrusted P.W.15 Chandubhai Shanabhai Baranda, Police Inspector, Special Squad, Rajkot City. He recorded the statements of the witnesses, and during investigation, it was found by him that one witness Ramesh Mohan had seen two accused out of eight accused because they stopped at his hotel on that day for taking tea. It was also found by investigating agency that the present six appellants were arrested by Kama Police Station of Bharatpur District, Rajasthan State, because they were found having a truck loaded with the M.R.F. Tyres and one Maruti Van. Therefore the present appellants were arrested on 14th October, 2000, from Rajasthan in this crime registered. The original accused No.7 and 8 to whom Ramesh Mohan was in position to identify were arrested, thereafter on 20th April, 2001, vide panchnama. It was also revealed during investigation that some of the tyres robbed from the godown of M.R.F.Tyre Company at Navagam were found by Hathin Police Station Officer at Haryana. Therefore, PSI Bakul Vitthalbhai Jani was sent to Hathin Police Station and vide Hathin Police Station Crime Register No.183/2000 under Sec.412 and 413 of the IPC the said Officer had seized 78 tyres which were considered to be the muddamal of this case. Bakulbhai Vitthalbhai Jani, PSI has been examined as a prosecution witness No.14. After investigation was over, a chargesheet came to be filed

against the accused. The first charge-sheet came to be filed against present six appellants and the case was committed to the Court of Sessions and was registered as Sessions Case No.67/2001. While accused No.7 and 8 who were arrested in 2001 as aforesaid, a supplementary chargesheet was submitted by the police against them and their case was also committed to the court of sessions and it was registered as Sessions Case No.105/2001. The learned Sessions Judge by order dated 14th September, 2001, directed to consolidate both the sessions cases and evidence be recorded as such since both the cases had arisen from the same crime register i.e. Rajkot Taluka Police Station Crime Register No.478/2000.

2.2 The learned Sessions Judge, Rajkot, framed the charge vide Exh.1 against all the eight accused for the above said offences on 16th August, 2001. Each of the accused pleaded not guilty and therefore prosecution was called upon to produce the evidence. After recording of the evidence and taking into consideration of all the documentary evidence produced by the prosecution and recording the statement of the accused under sec.313 and after having heard the learned advocates for the defence and learned APP for the prosecution, the learned trial Judge came to the conclusion that the present appellants i.e. original accused No.1 to 6 were found guilty and were convicted as aforesaid, while accused No.7 and 8 were acquitted as aforesaid.

2.3 Being aggrieved by judgment of conviction recorded by the learned Additional Sessions Judge (Fast Track), Rajkot, this appeal is preferred by the appellants original accused No.1 to 6.

3. Learned Senior Counsel Mr.P.M.Thakkar for the appellants and learned APP Mr.Sudhansu Patel for the respondent State were heard in detail.

4. Before reappreciating the evidence of the prosecution during trial and appreciating the contention raised by both the sides, the evidence produced by the prosecution in the trial is required to be perused carefully.

5. Kishorbhai Kanjibhai P.W.1 Exh.10 is a witness who informed the police and FIR came to be registered on his complaint. In his evidence he supports to the prosecution case to the extent that his father was found from the godown and was attempted to convey through gestures that some persons came in the night hours with the rifles and had beaten him. To this extent the

witness supported the complaint. So far as the fact of robbery of tyres from the M.R.F. Tyre Company godown is concerned, this witness stated his ignorance in the evidence. Learned APP sought permission to confront the witness with his complaint. So the witness has not supported the fact that a dacoity was committed in M.R.F. godown and about more than 100 tyres were taken away by dacoits. His complaint is placed on record at Exh.21.

5.1 P.W.2 Subhashchandra Babulal is examined at Exh.22 as panch of panchnama of scene of offence. The said panchnama is placed at Exh.23. According to panchnama at Exh.23 which was executed on 14.30 hours on 3rd July, 2000, by the investigating officer prosecution proposes the case that the complainant Kishorbhai Kanjibhai Rathod had shown the godown shutters which were broken and P.W. 4 Manager of godown Mr.Ramkrishnan Aiyer stated that out of this godown in all 175 M.R.F. tyres costing for about Rs.17.50 lakhs were stolen. The panchas were this P.W.2 Subhashchandra Babulal and one Chetan Suresh Nandani. P.W.2 Subhashchandra Babulal supported the prosecution case and the panchnama at Exh.23.

5.2 The prosecution also proposes the case that on 23rd April, 2001, accused No.7 on his own volition in the presence of panchas had shown the scene of offence at village Navagam at M.R.F.Tyre Company godown and police drawn panchnama at Exh.25.

5.3 P.W.3 Hanif Ajibhai Exh.24 is one of the panch of that panchnama who has not supported the prosecution case or panchnama Exh.25. However, since accused No.7 and 8 are acquitted, the appreciation of this evidence is beyond the scope of this appeal as no acquittal appeal is filed by the State against them.

5.4 Kanjibhai Nanjibhai was the only person available at the scene of crime at the time of commission of crime, is examined as prosecution witness No.4 at Exh.26. He stated that on the day of the incident at about after 24.00 hours the electricity in his cabin was shut-off and in the darkness two persons came near him and was caught hold from his throat, his mouth was gagged, hands were tied from behind and was beaten. Thereafter according to the witness he was carried and dumped in the godown and was taken out by the police in the next morning. In his deposition he categorically denied the examination-in-chief that he could not identify the persons who had beaten him and that this persons were carrying arms like rifle. Though he supported the case of the prosecution that from the godown of M.R.F.Company

about 170 tyres were stolen at night. He was taken to hospital for the treatment. The important aspect is that when accused were shown to him during deposition he stated that he was not able to say whether on the day of the incident those very persons (accused) came to his cabin and had beaten him.

5.5 P.W.5 Dhirubhai Jasingbhai Exh.27 was a watchman in one firm near United Paper Industries. His evidence is not useful to the prosecution to the extent that according to him he had no personal knowledge about the incident and in the morning he came to know that the dacoity was committed in respect of M.R.F. Tyres Company godown.

5.6 At Exh.28 the prosecution has produced arrest panchnama of the present appellants who were arrested on about 15th October, 2000, in this crime and were taken into custody by Rajkot Police Station through transfer warrant to Palwal Court at Haryana State. This panchnama Exh.28 is admitted by the defence and is placed on record for consideration. This panchnama Exh.28 was drawn by the investigating agency in the presence of two panchas on 15th October, 2000, at 23.00 hours to 23.50 hours at Rajkot.

5.7 Likewise at Exh.29 arrest panchnama of original accused No.7 and 8 (acquitted accused) dated 28th April, 2001, is placed on record.

5.8 The Manager of Godown of M.R.F. Company situated at Navagam, Old Highway, Rajkot, Mr. Ramkrishnan V. Aiyer is examined by the prosecution as P.W.6 at Exh.32. According to him, the incident took place at late night of 2nd July, 2000, and on very early morning of 3rd July, 2000. He was informed in the morning of 3rd July, 2000, by Vinodbhai who was serving as peon of said godown. He visited the godown immediately. The police was informed and he found that the shutters of main godown were broken half and there were wheel marks of tyres on the road. In the cabin of watchman one rifle was lying. In the presence of police it was found that in all 176 tyres were missing and were taken away by dacoits. Kishorbhai according to him gave FIR to the police. He supported the fact that watchman Kanjibhai P.W.3 was found in godown in injured condition. He stated in the deposition that according to his knowledge 90 tyres out of 176 tyres were seized by the officers of Kama Police Station of Bharatpur District at Rajasthan, while 78 tyres were seized by officer of Hathin Police Station at Haryana. He stated that according to his knowledge those tyres

were in the custody of Bharatpur as well as Faridabad Police and remaining 8 tyres were not traced out. So far as his evidence is concerned in cross examination it was found that the police had taken specimen finger prints from the godown and he stated that he had not seen the tyres seized by Rajasthan and Haryana Police. In his cross-examination he also stated that each tyre contains serial number and the size.

5.9 The prosecution proposed the case that original accused No.7 and 8 who are acquitted by the learned trial Judge were identified by a witness Ramesh Mohan at Rajkot because witness Ramesh Mohan owns a hotel on the highway and this two accused No.7 and 8 had stopped at his hotel for taking tea. On arresting accused No.7 and 8 the investigating agency had arranged an identification parade and in the said identification parade accused No.7 and 8 were identified by witness Ramesh Mohan and, therefore, the prosecution examined P.W.7 Dipak Mahipatbhai Shukla at Exh.38, Executive Magistrate who conducted the said identification parade on 23rd April, 2001, panchnama prepared by him in the presence of panchas is produced by the prosecution at Exh.36. The panch of said panchnama Altaf Kadri is examined as prosecution witness No.8 and he has not supported the prosecution case. The other panch of the said panchnama Exh.36 Kamlesh Jayantilal Manek is examined by the prosecution witness No.9 who has also not supported the prosecution case. Anyhow this evidence of identification parade in respect of witness Ramesh Mohan is not required to be appreciated in this appeal because the same is beyond the scope of appeal as the evidence pertains to accused No.7 and 8 and they are acquitted by the learned trial Judge and no acquittal appeal is filed by the State against them.

5.10 The prosecution proposed the case that the present six appellants were found in possession of the stolen tyres with a truck and maruti van in Rajasthan in the district of Bharatpur within the limits of Kama Police Station. The officers of the Kama Police Station arrested the accused present appellants and seized the truck, tyres and maruti van and, therefore, the prosecution examined Jagdish Amarchand Yadav at Exh.40 as P.W.10. He happened to be a Constable of Kama Police Station, Rajasthan State, and the incident he narrated took place on 9th July, 2000. According to witness Jagdish Amarchand Yadav, PSI Manoj Gupta was in charge of Kama Police Station, and at about 0030 hours, they were on patrolling and they received an information that one truck bearing No.HR-38-A-5411 and Maruti Van bearing

No.HR-28-8284 were boarded by some gundas and they had driven towards Johera road. On receiving information they moved in a jeep towards the said road. On the said road near jain petrol pump they found a truck and maruti van, bearing above said registration number parked near the petrol pump. According to witness, when they saw the police, the gundas started fleeing away leaving the truck and maruti van, they were cordoned and the gundas opened fire upon them. Ultimately all the six persons were arrested by them. In the court room in his evidence witness Jagdish Amarchand Yadav identified the present appellants to be the said five gundas. One of them according to him had absconded and weapons like 12 bore rifles were seized from them. On searching the truck they found 90 tyres of M.R.F.Company with tubes. Nothing was found from the maruti van. A panchnama was prepared, number of tyres were mentioned in the panchnama and FIR was registered against appellants No.1 to 5. The copy of the said FIR was produced by the witness but the same was not exhibited.

5.11 In support of P.W. 10 Jagdish Amarchand Yadav, the prosecution also examined another constable of Rajasthan Police named as Udhamsing Bhagvansing as P.W.11 at Exh.41. He stated that about 9th July, 2000, he was serving as Police Constable at Kama Police Station and PSI Manoj Gupta was in charge of the said Police Station, who had given FIR against the present appellants No.1 to 5 for the charges under sec.307 of the IPC which was registered by him. He also produced on record the xerox copy of the said FIR but the same was not taken on record. It appears that this witness Udhamsing also one of the personnel of police party which found maruti van and a truck with tyres at jain petrol pump. He identified the appellants No.1 to 6 in the court and stated that the accused were fleeing away in maruti van and fired upon the police. The evidence of P.W.10 and P.W.11 will be discussed later on.

5.12 Chandrakantbhai Hirjibhai Gajjar was serving as Police Inspector, Rajkot Taluka Police Station, is examined as prosecution witness No.12 at Exh.43. According to him, he was informed by PSO Mehmudbhai Gulabbhai that godown of M.R.F.Company situated at village Navagam, Taluka Anandpar appeared to have been raided by dacoits and the watchman was missing so he immediately reached at the godown. He found out P.W.4 Kanjibhai from the godown and found out from the Manager Ramkrishnan Aiyer that dacoity is committed in respect of about 170 tyres of M.R.F.Company. He recorded the FIR which is at Exh.23 as given by P.W.1 Kishorbhai and

injured Kanjibhai was sent to the hospital. Thereafter from the orders of the Commissioner the case was entrusted to DCB Police Inspector. The Station Diary Entry of Rajkot Taluka Police Station by which the crime came to be registered is at Exh.44.

5.13 Witness Amaji Khodaji Rathod at the relevant time was serving as Constable of Aslali Police Station at Ahmedabad is examined by the prosecution witness as P.W.13 Exh.46. He produced on record certain xerox copies of the FIR registered against the present appellants for the charges under Secs.395 and 397 of the IPC. The prosecution proposed that the appellants were inter state gang of the dacoits against whom many offences of dacoity and robbery were registered at various places.

5.14 Bakulbhai Vitthalbhai Jani serving as PSI, DCB Branch, Rajkot, is examined at P.W.14 at Exh.50. According to him, on 11th July, 2000, P.I. Mr.Baranda directed him to visit Bharatpur District at Rajasthan and Haryana, because according to information to Mr.Baranda, the tyres robbed from M.R.F. company godown, Navagam at Rajkot were seized by police of Haryana. Accordingly, this witness visited Hathin Police Station and he found that vide Crime Register No.183/2000 under sec.412 and 413 of IPC Hathin Police Station had seized 78 tyres which according to witness were the tyres stolen in this case. From Palval Court an order was sought to hand over those tyres to Rajkot Police as muddamal but infact the tyres were kept at Hathin Police Station.

5.15 As last witness, investigating officer Chandubhai Shanabhai Baranda is examined by the prosecution as P.W.15 at Exh.51. According to him, the investigation was handed over to him on 4th July, 2000, and present six appellants were arrested from Bharatpur District, Rajasthan. The other two accused, accused No.7 and 8 were arrested from Ahmedabad. He submitted chargesheet against eight accused. According to him, he tallied from the main office of the M.R.F.Company that the tyres seized by Kama Police Station and Hathin Police Station were the tyres stolen from the godown of M.R.F.Company at Navagam and the subject matter of this crime.

6. From the above evidence the learned trial Judge after appreciating the evidence of P.W.10 Exh.41 Jagdish Yadav, P.W.11 Exh.42 Udhasing Bhagwansing and P.W.15 Chandubhai Baranda at Exh.51 came to the conclusion that the prosecution proved that the tyres stolen from M.R.F. Company godown were found from the present appellants

i.e. accused No.1 to 6 while witness Ramesh Mohan who identified accused No.7 and 8 was not examined by the prosecution, the learned trial Judge acquitted the accused No.7 and 8 and convicted the present appellants as aforesaid. The learned trial Judge also considered the evidence of P.W.4 Kanji Nanji, P.W.6 Ramkrishnan V.Aiyer and P.W.1 Kishor Kanji, the complainant to ascertain the fact that the dacoity was committed in the godown of M.R.F.Company at Navagam and 170 tyres were taken away by the accused.

7. Learned Senior Counsel Mr.P.M.Thakkar for the appellants urged that this is a case of no evidence firstly, because the complainant i.e. informer did not support the prosecution case and informer Kishorbhai Kanjibhai P.W.1 stated very categorically that he did not know about the commission of the crime. It was also urged that the evidence of injured Kanjibhai P.W.4 is not useful to the prosecution to convict the accused because in his evidence he also categorically stated that he was not in position to identify the accused at the time of commission of the crime. While prosecution witness Ramkrishnan Aiyer, Manager of M.R.F.Company stated to the extent only that from his godown the tyres were missing but this is not the evidence according to learned counsel to connect the accused with the crime. It was contended that the tyres alleged to have been seized by Kama Police Station and Hathin Police Station were not proved to be the tyres stolen in this case. Drawing the attention of this Court on depositions of P.W. 10, P.W.11 and P.W.15 it was urged that no reliance can be placed on this evidence to connect the accused with the crime on the fact that allegedly some tyres came to be seized by the police that too from the custody of the appellants. The main witness like watchman Jadav Bapa as per prosecution story and Ramesh Mohan have not been examined. Even otherwise according to learned counsel this is a case of circumstantial evidence and the prosecution has failed to establish the chain through conclusive links and therefore he urged to allow the appeal and acquit the accused.

8. On the other hand, learned APP Mr.Sudhansu Patel vehemently countenance the order of conviction impugned in this appeal. It was contended that though there is no direct evidence of commission of crime because there were no eye-witnesses but main link of the chain of the prosecution story is proved by the prosecution. It was contended that from the evidence of Ramkrishnan Aiyer, Manager of M.R.F.Company godown and investigating officer P.W.15, the facts remains proved that dacoity was

committed in respect of the godown of M.R.F. Company at Navagam and in that crime about 176 tyres were stolen though this fact is not supported by P.W.1 complainant Kishorbhai Kanjibhai. It was contended that the material evidence in this respect is P.W.10 Constable Jagdish Amarchand Yadav of Rajasthan Police, P.W.11 Exh.41 Udhamsingh, Police Constable of Rajasthan Police and the evidence of investigating officer P.W.15 Chandubhai Baranda Exh.51. My attention was drawn to the evidence of P.W.14 Bakulbhai Vitthalbhai at Exh.50. It was contended that during the evidence of P.W.10 and P.W.11 it is proved by the prosecution that in a truck near Jain petrol pump on 9th July, 2000, police party of Kama Police Station seized tyres stolen from Rajkot and which muddamal is subject matter of this crime. It was contended that there is no reason to disbelieve the prosecution witness No.10 and 11. Again it was contended that investigating officer Mr. Baranda at Exh.51 in his examination-in-chief categorically stated that he had tallied the information from the main office of M.R.F. company to the extent that the tyres which were seized by Kama Police Station and Hathin Police Station was the tyres stolen from the M.R.F. Company godown at Rajkot and, therefore, it was contended that there is no scope of any doubt as to evidence of this witnesses. When the recovery of the tyres being stolen article is proved by the prosecution the charge of dacoity is said to have been proved by the prosecution and, therefore, the present appellants were rightly convicted by the learned trial Judge. It was contended that the appeal therefore requires dismissal.

9. Having heard learned advocates for both the sides, having gone through the record of the trial court and having scanned the evidence thoroughly on reappraisal it clearly comes out from the evidence that this is a case rests on circumstantial evidence as there is no direct evidence to connect the appellants with the crime. Only available witness of scene of crime is examined by the prosecution as witness No.4 Kanjibhai. Scanning his evidence it becomes clear that two persons came to his cabin, electricity was cut off, he was gagged and taken to godown from his cabin. Important it is to note that he stated categorically that it was dark at night and it was impossible for him to recognise the faces of the persons attacked him. Therefore he stated that he was not in position to recognise the person who attacked him. It appears that this may be the reason for the investigating officer for not to go for test identification parade in respect of this witness. The other witness examined on the next morning of the crime

committed are P.W.1 Kishorbhai Kanjibhai, P.W.6 Ramkrishnan Aiyer and investigating officer P.W.15 Chandubhai Shanabhai Baranda. From the panchnama of scene of offence and from the evidence of prosecution witness No.6 Ramkrishnan Aiyer, the fact is established that the godown of MRF tyre was robbed by dacoits after breaking open shutters and about 170 tyres were stolen. Though the fact remains that 170 tyres consist two truck loads and considerable time and human energy must have been placed for removing those tyres, none of the persons residing or might be present around the scene of crime noticed the dacoity committed to this large extent probably by employing more human power and two trucks. Therefore though the fact is established that the said tyres were robbed from the godown, there is no direct evidence to connect the accused at the scene of crime. No other witness except Kanjibhai who accosted alleged dacoit is examined by which it could be revealed that any of the appellants were seen committing robbery.

10. For the aforesaid reasons, since there is no direct evidence, the case rests solely upon circumstantial evidence. The prosecution proposed to rely upon the recovery of stolen tyres by Hathin Police Station at Haryana State and by Kama Police Station at Rajasthan State. Except this circumstances there is no other direct evidence to connect the present appellants with the commission of crime.

11. Now the law regarding basing a conviction on circumstantial evidence is well settled. When a case rests upon circumstantial evidence prosecution must prove each link of chain of circumstances leading towards guilt of the accused. The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established, not only that but such circumstance must be of a definite tendency unerringly pointing towards the guilt of the accused and such circumstance taken cumulatively should form a chain so complete that there may not be escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstance must be so complete that it should be incapable of explanation of any other hypothesis than that of the guilt of the accused and must be inconsistent with innocence of the accused.

12. Bearing in mind the establish law as to appreciation of evidence in a case rests upon circumstantial evidence, in this case evidence of recovery of stolen tyres from the appellant is required

to be appreciated.

13. When we advert to the evidence of recovery of stolen tyres by Kama Police Station at Rajasthan, the evidence of P.W.10 Jagdish Amarchand Yadav, Police Constable of Kama Police Station, P.W.11 Udham Singh, again Police Constable of Kama Police Station and the evidence of P.W.15 Investigating Officer Chandrakant is required to be appreciated. P.W.10 Jagdish Amarchand Yadav Exh.14 as aforesaid stated that on receiving the information by Police Station incharge PSI Shri Manoj Gupta they had driven towards Johera Road and found a truck and maruti van parked near Jain Petrol Pump. In examination-in-chief witness Jagdish states that on seeing them the gundas leaving the truck and maruti van started fleeing away but they were cordoned, they attempted firing upon the police and ultimately they were caught and he identified the accused No.1 to 5 to be the persons apprehended near the Jain Petrol Pump. Now if his evidence is appreciated it becomes clear from his examination in chief and examination-in-cross that even if his evidence is to be taken to be true on its face value then categorically he stated in examination-in-cross that appellants No.1 to 5 who are in maruti van and started fleeing on seeing them in maruti van itself. According to depositions given by other witness, the stolen tyres were found from the truck parked besides the maruti van and nothing was found from maruti van. He also stated in cross-examination that he could not say that who were sitting in the above said truck and who was driving the truck. The investigation according to this witness was carried out by PSI Manoj Gupta to whom the prosecution has not examined. Therefore, the witness stated his ignorance that who was the owner of the said truck and whether the truck was handed over to the custody of its owner. He was not able to say that what happened to the case in which the appellants No.1 to 5 were arrested on the ground that they were in possession of the tyres which were found in the above said truck. In whole of the evidence of this witness nothing is found so conclusive as unerringly pointing finger towards the appellants No.1 to 5 that the said tyres and truck were in the custody of appellants No.1 to 5 and that the said tyres were the same which alleged to have been stolen from the M.R.F.godown. From his evidence what is revealed is that appellants No.1 to 5 from maruti van parked near the truck on seeing them started fleeing around the jain petrol pump and were caught. This circumstance is not the circumstance which conclusively prove a link of the chain of prosecution case that the tyres which were found in the truck at the

jain petrol pump were the same as was stolen from the M.R.F. company godown, Rajkot and were found from the truck which was in the custody of appellants No.1 to 5. Likewise prosecution witness No.11 Udham Singh, Head Constable of Kama Police Station who registered the offence against appellants for the charges under Section 307 of the IPC probably because of the allegation that near the jain petrol pump the appellants No.1 to 5 opened gun fire upon the police. This witness Udham Singh also belong to the party raided jain petrol pump and stated that the appellants attempted to flee from maruti van. In his cross-examination he positively stated that none of the appellant was found in the truck. He has also stated that on inquiry it was found that the truck was in break down condition and was parked there. From the evidence of this two witnesses, if we appreciate the evidence, no nexus between truck and the tyres kept in the truck could be established by the prosecution as a circumstance conclusively and beyond doubt so as to draw inference that the stolen tyres were kept in the truck found near jain petrol pump at Rajasthan and that the appellants were in custody of those tyres. If this circumstance is incapable of drawing that conclusive inference then the link between the accused and the crime through the alleged recovery of muddamal is not conclusively proved by the prosecution as laid down by the established law.

14. In respect of recovery of tyres of truck near jain petrol pump, the evidence of investigating officer Mr.Baranda P.W.15 is also required to be appreciated. In examination-in-chief it is stated that he visited main office of M.R.F.Company and tallied the fact that the tyres which seized by Kama Police Station and Hathin Police Station were the tyres stolen from the M.R.F.Company godown at Navagam at Rajkot. When the witness P.W.15 was accosted to cross-examination though he denied the suggestion that he had not tallied the number of tyres but he positively further stated that for the investigating purpose in this case he had not gone out of Gujarat and he deputed his under officer to investigate. He further stated that he had no personal knowledge about the investigation carried out by the officers deputed beyond Gujarat but only he perused the report of investigation filed by them. He has further stated that he had not seen the tyres which were seized by Rajasthan as well as Haryana Police. He also stated that no attempt was made to identify the muddamal tyres by any person from the M.R.F.Tyre Company.

15. In respect of this evidence of investigating

officer, it is necessary to refer to the law laid down by the Apex Court in cases like this as to appreciation of the evidence in the matter of Tanviben Pankajkumar Divetia Vs. State of Gujarat reported in (1997) 7 SCC 156 paragraphs 45 and 46 the Apex Court observed as under.

"Para.45 The principle for basing a conviction on the basis of circumstantial evidences has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The Court must satisfy itself that various circumstances in the chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot, in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the Court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof for sometimes, unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions (Jaharlal Das v. State of Orissa).

"para 46. We may indicate here that more the suspicious circumstances, more care and caution is required to be taken otherwise the suspicious circumstances may unwittingly enter the adjudicating thought process of the court even though the suspicious circumstances had not been clearly established by clinching and reliable evidence. It appears to us that in this case, the decision of the Court in convicting the appellant has been the result of the suspicious

circumstances entering the adjudicating thought process of the Court."

16. In the matter of Vithal Tukaaram More and others V/s. State of Maharashtra reported in (2002) 7 SCC 20 in para 11 the Apex Court observed as to appreciation of circumstantial evidence as under.

"para 11. In the case of State of U.P. v. Dr.Ravindra Prakash Mittal this Court has held that the essential ingredients to prove guilt of an accused by circumstantial evidence are: (a) the circumstances from which the conclusion is drawn should be fully proved; (b) the circumstances should be conclusive in nature; (c) all the facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence; (d) the circumstances should to a moral certainty, exclude the possibility of guilt of any person other than the accused."

17. Now in this respect one more evidence of P.W.14 Exh.50 is required to be noted. P.W.14 Bakulbhai Vitthalbhai, the then PSI of DCB Branch at Rajkot was deputed by investigating officer at Haryana to verify the crime registered before Hathin Police Station. He also stated that he visited Hathin Police Station and found that Hathin Police Station had seized in all 78 tyres and he requested Palwal Court to treat those tyres as muddamal in this case while factual custody of the tyres remained with Hathin Police Station. Now nowhere this witness stated that as per the allegation before the Hathin Police Station those 78 tyres were seized from the custody of the appellants nor it was stated by him that the tyres which Hathin Police Station seized were the same which was stolen from M.R.F.Tyre Company godown at Rajkot. Some copies of the FIR registered at Kama Police Station as well as Hathin Police Station were attempted by the prosecution to be produced on record but the same are not exhibited for the consideration of the court and rightly so because firstly those are the copies of the original and none from the Hathin Police Station and the person who was investigating the offence of Kama Police Station PSI Manoj Gupta, was examined as a witness of the prosecution. So taking into consideration the evidence of P.W.14 also, there is nothing on the record to establish that 78 tyres which were seized by the Hathin Police Station were the stolen muddamal of this case and there was any nexus of the present appellants with those

tyres.

18. Considering the principle of appreciation of evidence in a case resting upon circumstantial evidence, from the evidence of P.W.14, P.W.10, P.W.11 and P.W.15 it could not be inescapably proved that the tyres which Kama Police Station seized and Hathin Police Station seized was the same as were stolen from the M.R.F. Company godown nor such circumstances are capable from which conclusive inference can be drawn that the tyres which were seized by Hathin Police Station and Kama Police Station had any connection at all with the present appellants. Further for both the crimes registered at the said two police stations, trial might be pending or might have ended, if the court of competent jurisdiction comes to the conclusion after the trial in respect of both the crimes registered against the appellants that they were not involved in the said crimes then it would be difficult to rely upon the evidence of P.W.10 and P.W.11 or even P.W.14 to conclude that since the tyres were found allegedly in the custody of the appellants at Rajasthan and Haryana and the same were the tyres stolen from the M.R.F. company godown at Rajkot the appellants were guilty of committing dacoity as proposed by the prosecution. In the prosecution evidence it is not revealed that what happened to the crime registered against the appellants if at all registered in respect of tyres found from them at Haryana and Rajasthan. Be that as it may. On appreciating the evidence of these witnesses the evidence is not so complete and conclusive as to infer the guilt and only guilt of the accused and that too completely inconsistent with the innocence of the accused. The investigating agency ought to have collected the evidence as to the description of the tyres when it is easily available by numbers given to each of the tyre. The recovery of tyres by Kama Police Station and Hathin Police Station could also have been proved by identification of tyres by P.W.6 Ramkrishnan Aiyer. The investigating officer had no personal knowledge about the tyres seized by the above said two police stations. When say of investigating officer is appreciated that it tallied the numbers of the tyres, then on scrutiny of that evidence missing link in the prosecution case is that, what were the descriptions and number of tyres stolen from the M.R.F. godown at Rajkot and whether the tyres recovered by the police stations at Kama and Hathin were the same. All the more very important link for prosecution case is whether conclusively is it proved that 78 tyres recovered by Hathin Police Station and the tyres recovered by Kama Police Station were recovered from the custody of the present appellants? In fact

irrespective of circumstances there is no evidence at all on this two aspect by which the court can draw inference conclusively that the tyres alleged to have been recovered from above two police stations were beyond doubt recovered from the present appellants and again beyond doubt those tyres were the tyres stolen from M.R.F.Company godown at Rajkot. True it is that the offences committed of dacoity of robbery at night hours there may not be any direct evidence to bring the accused to the book. The recovery of muddamal article at the instance of the accused or from the custody of the accused may prove beyond doubt the commission of crime. But in this case though there is no direct evidence but the recovery of the tyres as proposed to be proved by the prosecution could not be proved to be the recovery from the custody of the appellants and that the recovery of muddamal stolen. The standard of proof which requires in such cases is higher than ordinarily and therefore in the above said case of Tanviben (Supra) the Supreme Court observed that the more case rests upon the circumstantial evidence, more care and caution is expected from the courts to appreciate the evidence adduced by the prosecution.

19. For the aforesaid reasons the learned trial Judge erred in appreciating the evidence of recovery of tyres and relying on the said evidence convicted the accused.

20. In the result, the judgment and order delivered by the learned Additional Sessions Judge (Fast Track Court), Rajkot, on 7th September, 2002, in Sessions Cases No.67 of 2001 and 105 of 2001, convicting the present appellants for the charges levelled against them under Sections 325, 342, 395, 397, 427 of the Indian Penal Code and Section 25(1)(a) of the Arms Act, 1959, and sentencing each of the appellant to undergo seven years R.I. and fine of Rs.5,000/- for the charges against each of the appellant under Section 395 of IPC, sentencing each of the appellant to undergo R.I. for seven years and fine of Rs.5,000/-, in default of fine of Rs.5,000/to undergo simple imprisonment for one year for the charges levelled against each of the appellant for sec.397 of IPC, sentencing each of the appellant to undergo R.I. for one year and fine of Rs.500/- for the charges levelled against each of appellant under Section 427 of the Indian Penal Code, sentencing each of the appellant to undergo R.I. for three years and fine of Rs.500/- in default to undergo simple imprisonment of three months in respect of charges levelled against each of the appellant for section 25(1)(a) of the Arms Act, 1959, is set aside. Each of the appellant of this appeal is acquitted of all

the charges levelled against them under Section 325, 342, 395, 397 and 427 of the Indian Penal Code and for the charges levelled against each of the appellant under Section 25(1)(a) of the Arms Act. Fine, if any, paid by any of the appellants be refunded to respective appellant. Rest of the order of learned Additional Sessions Judge (Fast Track Court), Rajkot in respect of muddamal etc. is not interfered with.

21. Each of the appellant be set at liberty if any of them is not required to be detained in jail, for any other purpose.

(J.R. Vora, J.)

syed/